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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,493	01/15/2004	James Urban	DRP1100	7672
28213	7590	06/15/2005	EXAMINER	
DLA PIPER RUDNICK GRAY CARY US, LLP 4365 EXECUTIVE DRIVE SUITE 1100 SAN DIEGO, CA 92121-2133			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/759,493	Applicant(s) URBAN ET AL	
	Examiner Andrea M. Valenti	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-46 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 1, 3, 4, 5, 22, and 24 are objected to because of the following informalities:

Claim 1, line 4, "structural cells capable of being positioned" should be -- structural cells positioned--

Claims 3, 4, 5, 22, 24 contain "capable of" language which should be changed to a positive recitation of the limitation, e.g. Claim 1, line 4 correction.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7, 9, 11-13, 18, 19, 21-26, 31-33, 38, 39, 42, 43 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,810,510 to Urriola.

Regarding Claim 1, Urriola '510 teaches a structural cell system for supporting hardscape areas (Urriola '510 Fig. 2 road and sidewalk) that enables tree root growth and accommodates filtering, retention, storage and infiltration of storm water while preventing hardscape damage, comprising; a plurality of structural cells (Urriola '510 #4)

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capable of being positioned below a hardscape (Urriola '510 Fig. 2), the structural cells having openings sized **to accept** tree roots (Urriola '510 Col.5 line 22-23, applicant has merely claimed that the opening are capable of receiving roots not that there are roots through the opening) from a tree external to the structural cells and to accommodate natural growth of the tree roots within the structural cells; one or more permeable barriers around the structural cells (Urriola '510 #5); water ingress means into the plurality of structural cells; and water egress means from the plurality of structural cells (Urriola Fig. 2 flow arrows).

This claim is broad in nature and merely the soil and the porosity of the soil in Fig. 2 underneath the road and sidewalk can be the structural cell. Urriola '510 teaches a structural cell system for supporting hardscape areas (Urriola '510 Fig. 2 soil #7 under road and sidewalk) that enables tree root growth and accommodates filtering, retention, storage and infiltration of storm water while preventing hardscape damage, comprising; a plurality of structural cells (Urriola '510 the porosity of the soil creates cells) **capable** of being positioned below a hardscape (Urriola '510 Fig. 2), the structural cells having openings sized **to accept** tree roots (Urriola '510 the trunk of the tree is external to the cells and the cells inherently are sized to receive the roots) from a tree external to the structural cells and to accommodate natural growth of the tree roots within the structural cells; one or more permeable barriers around the structural cells (Urriola '510 grass layer on top and the sand layer #5 on the bottom); water ingress means into the plurality of structural cells; and water egress means from the plurality of structural cells (Urriola Fig. 2 flow arrows).

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Regarding Claims 22-23, Urriola '510 teaches a multi-layered structural cell system for supporting hardscape areas that enables tree root growth and accommodates filtering, retention, storage and infiltration of storm water while preventing hardscape drainage, comprising; a first layer (Urriola '510 Fig. 2 top element #4) of structural cells for short-term water storage positioned below the hardscape, the first layer of structural cells being **capable** of short term water storage; water ingress means into the first layer; a second layer of structural cells (Urriola '510 Fig. 2 middle element #4) positioned below the first layer, the second layer of structural cells being **capable** of storing tree-rooting medium supporting the growth of tree roots (i.e. applicant has claimed that the cell could store soil but the soil is not currently positively claimed as being in the cell); a third layer (Urriola '510 Fig. 2 bottom layer #4) of cell structure positioned below the second layer, the third layer of structural cells being **capable** of long-term water storage; water egress means from the third layer of structural cells; a first permeable barrier separating the first and second layer; a second permeable barrier separating the second and third layers; and each of the layers being in fluid communication with the other layers (Urriola '510 Fig. 2 the horizontal dividers between each layer of element #4).

Regarding Claims 2 and 26, Urriola '510 teaches the hardscape may be sidewalk, parking or roadway pavement (Urriola '510).

Regarding Claim 3, Urriola '510 teaches the open structural cells are **capable** of storing water (Urriola '510 Fig. 1).

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Regarding Claim 4, Urriola '510 inherently teaches the open structural cells are **capable** of storing low compacting tree-rooting medium.

Regarding Claim 5, Urriola '510 teaches the tree-rooting medium is capable of filtering the storm water (Urriola '510 Fig. 2 flow arrows).

Regarding Claim 7, Urriola '510 teaches the structural cells are positioned in two or more layers (Urriola '510 Fig. 1 #4).

Regarding Claim 9, Urriola '510 teaches one or more permeable barriers positioned separating the layers (Urriola '510 horizontal dividers between each level of element #4).

Regarding Claim 11, Urriola '510 teaches one or more ~~im~~permeable barriers positioned between the structural cells and the hardscape (Urriola '510 #5).

Regarding Claim 12, Urriola '510 teaches one or more ~~im~~permeable barriers positioned between the structural cells and the surrounding soil (Urriola '510 #5).

Regarding Claims 13 and 33, Urriola '510 teaches the structural cells are assembled in a vertical configuration (Urriola '510 Fig. 1).

Regarding Claims 18 and 38, Urriola '510 teaches the water ingress means is through permeable hardscape (Urriola '510 Col. 5 line 32-36).

Regarding Claims 19 and 39, Urriola '510 teaches water egress means is water infiltration into surrounding soil (Urriola '510 Col. 5 line 32-36).

Regarding Claims 21 and 43, Urriola '510 inherently teaches a means for flushing the system with water when the area is subjected to heavy rains, hurricanes, etc.

Regarding Claim 24, Urriola '510 inherently teaches the tree-rooting medium is **capable** of filtering the storm water between the first layer and the third layer.

Regarding Claim 25, Urriola '510 teaches a barrier positioned between the first layer and the hardscape (Urriola '510 #7).

Regarding Claims 31 and 32, Urriola '510 teaches one or more permeable barriers positioned between the first layer of structural cells and the hardscape (Urriola '510 #5).

Regarding Claim 42, Urriola '510 inherently teaches one or more weep holes to allow draining (Urriola '510 Fig. 4 apertures).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 10, 14-17, 27-30, 34-37, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,810,510 to Urriola et al.

Regarding Claims 14 and 34, Urriola '510 is silent on the structural cells are assemble in a corbel configuration. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Urriola at the time of the invention since the modification is merely a change in size via an old and notoriously well-known pattern configuration selected to fit in different space parameters and does not present a patentably distinct limitation.

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Regarding Claims 15, 27, and 35, Urriola '510 teaches that the stored water percolates back to the plants, but is silent on one or more water wicks. However, it is old and notoriously well-known in the art of plant husbandry to provide wicks as a controlled means of irrigation for healthy plant development. It would have been obvious to one of ordinary skill in the art to modify the teachings of Urriola '510 at the time of the invention for controlled irrigation to the plants.

Regarding Claims 6, 10, and 28-30, Urriola '510 is silent on a soil injection port, a cell inspection port, a flushing clean out port. However, it is old and notoriously well-known in the art of underground systems to provide ports for ease of routine maintenance and access to the system. It would have been obvious to one of ordinary skill in the art to modify the teachings of Urriola '510 at the time of the invention with various ports for the advantage of easily monitoring and maintaining the system.

Regarding Claims 16, 17, 36, 37 and 40, Urriola '510 teaches that the water ingress means is through the gutter of a roadway for runoff, but does not explicitly teach that the water ingress means is a storm drain inlet with a filter. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Urriola '510 at the time of the invention with the selection of the ingress means as a filtered storm drain since storm drains are old and notoriously well-known means of water runoff collection and would be an efficient means of channeling the water to the system taught by Urriola.

Regarding Claim 41, Urriola '510 teaches that it is known to conduit water flow to various cell layers (Urriola '510 Fig. 2), but is silent on a splitter system allowing some

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water to pass directly from the first layer to the third layer. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Urriola '510 at the time of the invention as an old and notoriously well-known means of controlled water flow in high flow situations to prevent over-saturation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7-9, 11-13, 18-26, 31-33, 38, 39, 42-46 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,779,946 to Urriola et al.

Regarding Claim 1, Urriola '946 teaches a structural cell system for supporting hardscape areas (Urriola '946 Fig. 17 shows the cell system beneath the hardscape and the trees) that enables tree root growth and accommodates filtering, retention, storage and infiltration of storm water while preventing hardscape damage, comprising; a plurality of structural cells (Urriola '946 Col. 6 line 1) **capable** of being positioned below a hardscape (Urriola '946 Fig. 17-24), the structural cells having openings sized to accept tree roots (Urriola '946 Fig. 20, even though applicant hasn't positively claimed that the roots are received in the openings, Urriola '946 shows the roots through the

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openings and element #16) from a tree external to the structural cells and to accommodate natural growth of the tree roots within the structural cells; one or more permeable barriers around the structural cells (Urriola '946 #24); water ingress means into the plurality of structural cells; and water egress means from the plurality of structural cells (Urriola '946 Col. 8 line 30-37).

Regarding Claims 22-23, Urriola '946 teaches a multi-layered structural cell system for supporting hardscape areas that enables tree root growth and accommodates filtering, retention, storage and infiltration of storm water while preventing hardscape drainage, comprising; a first layer (Urriola '946 Fig. 20 #1) of structural cells for short-term water storage positioned below the hardscape, the first layer of structural cells being **capable** of short term water storage; water ingress means into the first layer; a second layer of structural cells (Urriola '946 Fig. 20 #57 top layer) positioned below the first layer, the second layer of structural cells being **capable** of storing tree-rooting medium supporting the growth of tree roots; a third layer (Urriola '946 Fig. 20 #57 bottom layer) of cell structure positioned below the second layer, the third layer of structural cells being **capable** of long-term water storage; water egress means from the third layer of structural cells; a first permeable barrier separating the first and second layer; a second permeable barrier separating the second and third layers; and each of the layers being in fluid communication with the other layers (Urriola '946 Col. 8 line 58-60).

Regarding Claims 44 and 45, Urriola '946 teaches a method of making an urban tree growth system; comprising; forming an opening in the hardscape at least large

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enough for a rootball of a tree; positioning a plurality of structural cells in layers around the opening under the hardscape; inserting the rootball in the opening; and filling the opening and some of the structural cells proximate the opening with a tree-rooting medium for supporting tree growth (Urriola '946 Fig. 17 and 18).

Regarding Claims 2 and 26, Urriola '946 teaches the hardscape may be sidewalk, parking or roadway pavement (Urriola '946 Col. 1 line 11).

Regarding Claim 3, Urriola '946 teaches the open structural cells are **capable** of storing water (Urriola Fig. 3 #17).

Regarding Claim 4, Urriola teaches the open structural cells are **capable** of storing low compacting tree-rooting medium (Urriola '946 Abstract line 6 and Col. 6 line 49).

Regarding Claim 5, Urriola '946 teaches the tree-rooting medium is capable of filtering the storm water (Urriola '946 Col. 8 line 62).

Regarding Claim 7, Urriola '946 teaches the structural cells are positioned in two or more layers (Urriola '946 Fig. 13 #36 and Fig. 17).

Regarding Claim 8, Urriola '946 teaches at least one layer includes structural cells filled with water and at least one layer filled with soil (Urriola '946 Fig. 3 #17 and Col. 6 line 48-49).

Regarding Claim 9, Urriola '946 teaches one or more permeable barriers positioned separating the layers (Urriola '946 Col. 8 line 58-60).

Regarding Claim 11, Urriola '946 teaches one or more ~~im~~permeable barriers positioned between the structural cells and the hardscape (Urriola '946 Col. 8 line 41-42).

Regarding Claim 12, Urriola '946 teaches one or more ~~im~~permeable barriers positioned between the structural cells and the surrounding soil (Urriola '946 Col. 8 line 58-60).

Regarding Claims 13 and 33, Urriola '946 teaches the structural cells are assemble in a vertical configuration (Urriola '946 Fig. 17).

Regarding Claims 18 and 38, Urriola '946 teaches the water ingress means is through permeable hardscape (Urriola '946 Fig. 20).

Regarding Claims 19 and 39, Urriola '946 teaches water egress means is water infiltration into surrounding soil (Urriola '946 Fig. 20).

Regarding Claims 21, 43 and 46, Urriola '946 inherently teaches a means for flushing the system with water when the area is subjected to heavy rains, hurricanes, etc.

Regarding Claim 24, Urriola '946 teaches the tree-rooting medium is **capable** of filtering the storm water between the first layer and the third layer (Urriola '946 Fig. 27).

Regarding Claim 25, Urriola '946 teaches a barrier positioned between the first layer and the hardscape (Urriola '946 Col. 7 line 23-24).

Regarding Claims 31 and 32, Urriola '946 teaches one or more impermeable barriers positioned between the first layer of structural cells and the hardscape (Urriola '946 Col. 8 line 41-42).

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Regarding Claim 42, Urriola '946 inherently teaches one or more weep holes to allow draining (through the pervious geotextile member that surrounds the cells).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 10, 14-17, 20, 27-30, 34-37, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,779,946 to Urriola et al.

Regarding Claims 14 and 34, Urriola '946 is silent on the structural cells are assemble in a corbel configuration. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Urriola '946 at the time of the invention since the modification is merely a change in size via an old and notoriously well-known pattern configuration selected to fit in different space parameters and does not present a patentably distinct limitation.

Regarding Claims 15, 27, and 35, Urriola '946 teaches that the stored water percolates back to the plants, but is silent one or more water wicks. However, it is old and notoriously well-known in the art of plant husbandry to provide wicks as a controlled means of irrigation for healthy plant development. It would have been obvious to one of ordinary skill in the art to modify the teachings of Urriola '946 at the time of the invention for controlled irrigation to the plants.

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Regarding Claims 6, 10, and 28-30, Urriola '946 is silent on a soil injection port, a cell inspection port, a flushing clean out port. However, it is old and notoriously well-known in the art of underground systems to provide ports for ease of routine maintenance and access to the system. It would have been obvious to one of ordinary skill in the art to modify the teachings of Urriola '946 at the time of the invention with various ports for the advantage of easily monitoring and maintaining the system.

Regarding Claims 16, 17, 20, 36, 37 and 40, Urriola '946 teaches that the water ingress means is through the gutter of a roadway for runoff, but does not explicitly teach that the water ingress or egress means is a storm drain inlet with a filter. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Urriola '946 at the time of the invention with the selection of the ingress means as a filtered storm drain since storm drains are old and notoriously well-known means of water runoff collection and would be an efficient means of channeling the water to the system taught by Urriola.

Regarding Claim 41, Urriola '946 teaches that it is known to conduit water flow to various cell layers (Urriola '946 Fig. 25 #69), but is silent on a splitter system allowing some water to pass directly from the first layer to the third layer. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Urriola '946 at the time of the invention as an old and notoriously well-known means of controlled water flow in high flow situations to prevent over-saturation.

Response to Arguments

Applicant's arguments filed 4 April 2005 have been fully considered but they are not persuasive.

Examiner maintains that Urriola '946 Fig. 17 illustrates an opening in the hardscape (Urriola '946 #56) sized large enough to have a tree planted. There are structural cells beneath both the hardscape and the tree (Urriola Fig. 17 #57) and the tree is external of the cells. However, the cells can accept the roots of the tree as illustrated (e.g. Urriola '946 Fig. 20 shows the roots growing into the cells). Examiner maintains the Urriola '946 teaches each and every structural limitation as presented by applicant and thus applicant has not patentably distinguished over the teachings of the cited prior art.

Regarding Claim 4, applicant has not positively claimed low compacting tree-rooting medium but has merely stated that the cells should be capable of storing low compacting rooting medium and Urriola '946 is capable of performing this function.

Regarding Claim 7, Urriola '946 clearly teaches that the cells are positioned in two or more layers disposed on each other (Urriola Fig. 17 #57 illustrates both two and four layers of cells disposed on each other).

Regarding Claim 21, examiner maintains since the apparatus is exposed to natural environmental conditions that heavy rains is a natural way of flushing the system since a high volume of water moves through the system at a high speed thus inherently flushing the system.

Regarding Claim 22, applicant has not positively claimed these functions but has merely claimed that the system should be capable of performing these functions. It is maintained the Urriola '946 is capable of short term and long term water storage etc since this can also depend on certain natural environmental conditions such as temperature, duration of time between rain episodes, etc.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

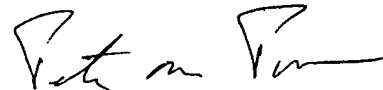
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

08 June 2005



Peter M. Poon
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